(3)

Proof

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 2686 OF 2003

PETITIONER : Pukram S/o Narayan Satnami, aged about 38 years, Panch, Gram Panchayat Paraskol, Tah.- Sarangarh, Distt. Raigarh (C.G.).

VERSUS

RESPONDENTS :

(1) State of Chhattisgarh Through: The Secretary Panchayat Department, D.K.S. Building, Raipur Distt. – Raipur (C.G.)

(2) The Collector Raigarh, Distt.- Raigarh (C.G.)

P. R. No. 2515/03
Presented by Shri Yogesh Pandey
dated 26.06.03

WRIT PETITION U/A 226/227 OF THE CONSITITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITION CERTIORARY ETC.OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE MATTER.

A.F.R. (41)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.2684 OF 2003

Dhansay

Versus

State of Chhattisgarh & another

AND

WRIT PETITION NO.2685 OF 2003

Firanteen Bai

Versus

State of Chhattisgarh & another

AND

WRIT PETITION NO.2686 OF 2003

Pukram

Versus

State of Chhattisgarh & another

POST FOR ORDER ON 6th September, 2003

Sd/-
L.C.BHADOO
Judge

6th September 2003

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.2684 OF 2003

PETITIONER: Dhansay, S/o Mohit Ram Sahu,
Aged about 42 years, Upsarpanch,
Gram Panchayat Paraskol,
Teh. Sarangarh, Distt. Raigarh (C.G.)

Versus

RESPONDENTS:

1) State of Chhattisgarh
Through: The Secretary,
Panchayat Department,
D.K.S. Building, Raipur,
Distt. Raipur (C.G.)

2) The Collector, Raigarh,
Distt. Raigarh (C.G.)

AND

WRIT PETITION NO.2685 OF 2003

PETITIONER: Firanteen Bai, W/o Pukram,
Aged about 35 years, Sarpanch,
Gram Panchayat Paraskol,
Teh. Sarangarh, Distt. Raigarh (C.G.)

Versus

RESPONDENTS:

1) State of Chhattisgarh
Through: The Secretary,
Panchayat Department,
D.K.S. Building, Raipur,
Distt. Raipur (C.G.)

2) The Collector, Raigarh,
Distt. Raigarh (C.G.)

AND

WRIT PETITION NO.2686 OF 2003

PETITIONER: Pukram, S/o Narayan Satnami,
Aged about 38 years, Panch,
Gram Panchayat Paraskol,
Teh. Sarangarh, Distt. Raigarh (C.G.)

Versus

RESPONDENTS:

1) State of Chhattisgarh
Through: The Secretary,
Panchayat Department,
D.K.S. Building, Raipur,
Distt. Raipur (C.G.)

2) The Collector, Raigarh,
Distt. Raigarh (C.G.)

Present: -

Mr. Awadh Tripathi, Advocate: For the petitioners

Mr. Sunil Sinha, Additional Advocate General
with Mr. Sanjay K. Agrawal, Dy. Advocate General
and Mr. Ranbir Singh Marhas, Govt. Advocate: For the State/respondents

Mr. Rajeev Shrivastava; Mr. Prashant Mishra;
Mr. Manindra Shrivastava; Mr. Yashwant Tiwari &
Mr. H.B. Agrawal, Advocates: Appear as Amicus Curiae

Before: Hon'ble Shri L.C. Bhadoo, J

ORDER

(Passed on 6th September, 2003)

1. These three writ petitions namely, W.P.Nos.2684/2003, 2685/2003 and 2686/2003 are being disposed of by this common order because a common question of law is involved in these petitions.

2. By this writ petition (W.P.No.2684/2003) under Article 226/227 of the Constitution of India, the petitioner has questioned the action of respondent No.2 (the Collector, Raigarh) by which the Collector has issued show cause notice to the petitioner under Section 36 (3) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam'). The Collector has sent this notice to the petitioner on the ground that the petitioner has three living children out of which one child is born after 26th January 2001 by which he has incurred disqualification to continue to hold Office of the Panchayat.

3. The petitioner's case is that he was duly elected Panch of Ward No.1 of Gram Panchayat, Paraskol, from the general seat and thereafter, he was elected as Upsarpanch of the same Gram Panchayat. The petitioner was already having two children i.e. one son and one daughter, and one more daughter namely, Kum. Kiran Bai was born as third child on 03.12.2002. The petitioner was elected in the year 2000 and on the date of election, he was not disqualified under the provisions of the Adhiniyam, but later on by amending the Adhiniyam, clause (m) of Section 36 (1) was inserted in the Adhiniyam. Clause (m) restricts the number of children which a person can have and if a third child is born after 26th January, 2001, then the office bearer of the Panchayat is disqualified to continue to hold the Office. According to the petitioner, after formation of the State of Chhattisgarh on 1st November, 2000, the State of Chhattisgarh adapted the M.P. Panchayat Raj Adhiniyam, 1993. But this provision of clause (m) of Section 36 of the Adhiniyam came into force on 26th January, 2001, whereas the M.P. Panchayat Raj Adhiniyam, 1993, which was in force as on 01.11.2000, was adapted vide notification dated 28th October, 2002 and clause (m) of sub-section (1) of Section 36 came into force on 26.01.2001 as per sub-section (2) of Section 1 of the Madhya Pradesh Panchayat Raj (Sanshodhan) Adhiniyam, 2000. Therefore, this clause was not in force on the date when the Adhiniyam was adapted by the State of Chhattisgarh. Unless this clause is adapted by the State of Chhattisgarh, this provision cannot be pressed into service to disqualify the petitioner from the post of Upsarpanch of Panchayat. Therefore, show cause notice dated 08.08.2003 of the Collector, Raigarh, be quashed as the basis of the notice is amended provision clause (m) of sub-section (1) of Section 36 of the Adhiniyam which is not applicable.

4. Mr. Sunil Sinha, the Additional Advocate General had taken notice on behalf of the State/respondents. The learned counsel for the petitioner and the learned Additional Advocate General were heard on

admission. As this question has been raised for the first time before this Court, therefore some of the Advocates also offered to assist the Court and accordingly, Mr. Rajeev Shrivastava, Mr. Prashant Mishra, Mr. Manindra Shrivastava, Mr. Yashwant Tiwari & Mr. H.B. Agrawal also addressed the Court in order to arrive at a just decision of the case.

5. Mr. Rajeev Shrivastava, Mr. Awadh Tripathi, Mr. Prashant Mishra, Mr. Yashwant Tiwari & Mr. H.B. Agrawal, Advocates submitted that clause (m) of sub-section 1 of Section 36 of the Adhiniyam was inserted by way of amendment in the Adhiniyam which received the assent of the Governor of the State of M.P. on 9th May, 2000 and published in the extra-ordinary gazette on 23rd May, 2000. However, sub-section (2) of Section 1 of the amended Act provides that it shall come into force on the 26th day of January 2001. Adhiniyam, 1993 was adapted by the State of Chhattisgarh under Section 79 of the Madhya Pradesh Reorganization Act, 2000, and at that time this newly inserted provision was not in force and the Adaptation of Laws Order, 2002, says that "the Laws as amended from time to time, specified in the Schedule to this order which were *in force* in the State of Madhya Pradesh immediately before the formation of the State of Chhattisgarh, are hereby extended to and shall be in force in the State of Chhattisgarh". Therefore, only those provisions of the Adhiniyam were adapted which were in force on the day of the 1st November, 2000 and this amended provision was not in force. Therefore, this amended clause (m) was not adapted by this order and after 26th January, 2001, this clause has not been adapted by the State of Chhattisgarh, as such, it cannot be pressed into service by the State in order to disqualify the office bearers of the Panchayats on account of having three living children, one of them is born after 26th January, 2001.

6. In this connection, Mr. Rajeev Shrivastava relied upon the cases of **The Chief Commissioner, Union Territory, Chandigarh vs. Sialkot Silk**

Stores, Chandigarh reported in **AIR 1979 SC 435**; **M/s. Punjab Tin Supply Co., Chandigarh etc. etc., vs. Central Government & others** reported in **AIR 1984 SC 87**; **The State of Orissa vs. Chandrasekhar Singh Bhoi, etc.,** reported in **AIR 1970 SC 398**; and **K. Manickchand & others vs. Elias Saleh Mohamed Sait & others** reported in **AIR 1969 SC 751**. He further argued that Madhya Pradesh General Clauses Act, 1957, defines the word "commencement" as used with reference to a Madhya Pradesh Act, means the day on which the enactment comes into force. Section 3 of the Madhya Pradesh General Clauses Act, 1957, lays down that "where any Madhya Pradesh Act is not expressed to come into operation on a particular day, then, it shall come into force if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, or the President, as the case may require, is first published in the Official Gazette". Since specific date has been mentioned for sub-section (2) of Section 1 of the amended Adhiniyam that this provision will come into force from 26th day of January, 2001, on the day of the adaptation it was not in force and the adaptation order says that only those acts are adapted which are in force on the day of the formation of the State, as such, this provision is not attracted in the case of the petitioner.

7. On the other hand, the learned Additional Advocate General argued that Section 79 of the M.P. Reorganization Act, 2000, lays down that *any law made before the appointed day*, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law. In this connection, he placed reliance on Section 2 (f) of the M.P. Reorganization Act, 2000 and also on Articles 13, 366 (10) and 372 of the Constitution of India and argued that the laws which were in existence on the day when the State of Chhattisgarh came into existence were adapted by Adaptation Order dated 28th October, 2002, whether the same were in force or not it makes no difference. In other words, all the existing laws were

adapted. As such clause (m) of sub-section (1) of Section 36 of the Adhiniyam was in existence on 9th May, 2000, when the Governor of Madhya Pradesh gave his assent. Since this law was in existence on 1st November 2000, the same was adapted and the Collector has rightly pressed into service the above provision. The learned Additional Advocate General relied upon the cases of **Fazru & another vs. State of Haryana & others** reported in **AIR 1998 Punjab & Haryana 133** and **Sant Ram & others vs. Labh Singh & another** reported in **AIR 1965 SC 314**.

8. Mr. Manindra Shrivastava, Advocate, supported the submissions made by Mr. Sunil Sinha, Additional Advocate General. Mr. Yashwant Tiwari; Mr. H.B. Agrawal; and Mr. Prashant Mishra, Advocates, supported the arguments advanced by Mr. Rajeev Shrivastava, Advocate. In order to appreciate the arguments advanced by respective counsel, it will be beneficial to reproduce all the relevant provisions concerning this matter.

(i) Sections 2 (f) & 79 of the M.P. Reorganization Act, 2000, reads thus,

Section 2 (f): *"law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Madhya Pradesh.*

Section 79: ***Power to adapt laws*** *--- For the purpose of facilitating the application in relation to the State of Madhya Pradesh or Chhattisgarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall*

have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority.

(ii) Sections 1 & 2 of the Madhya Pradesh Panchayat Raj (Sanshodhan) Adhiniyam, 2000, reads thus,

*1. **Short title** ---- (1) This Act may be called the Madhya Pradesh Panchayat Raj (Sanshodhan) Adhiniyam, 2000.*

(2) It shall come into force on the 26th day of January, 2001.

*2. **Amendment of Section 36** ---- In sub-section (1) of Section 36 of the Madhya Pradesh Panchayat Raj Adhiniya, 1993 (No.1 of 1994), after clause (1), the following clause shall be inserted, namely:-*

"(m) has more than two living children one of whom is born on or after the 26th day of January, 2001."

(iii) The adaptation order dated 28th October, 2002, reads thus,

*1. (1) This order may be called the **Adaptation of Laws Order, 2002.***

(2) It shall come into force in the whole State of Chhattisgarh on 1st day of November, 2000.

*2. The Laws as amended from time to time, specified in the Schedule to this order which **were in force in the State of Madhya Pradesh** immediately before the formation of the State of Chhattisgarh, are hereby extended to **and shall be in force in the State of Chhattisgarh**, until repealed or amended. Subject to the modification that in the laws for the words "Madhya Pradesh" wherever they occur the word "Chhattisgarh" shall be substituted.*

(iv) Article 13 (3) (a); Article 13 (3) (b); Article 366 (10) and Article 372 (1) & Explanation-I of the Constitution of India reads thus,

Article 13 (3) (a):- *"law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;*

Article 13 (3) (b):- *"laws in force" includes **laws passed or made by a Legislature** or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, **notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.***

Article 366 (10):- ***"existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature**, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation.*

Article 372 (1):- *Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all **the laws in force in the territory of India** immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.*

Explanation-I:- ***The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution** and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.*

9. Now, if we look into the above provisions of law, clause (m) of sub-section (1) was inserted in Section 36 of the Adhiniyam and the same received the assent of the Governor on 09.05.2003 and thereafter, it was published in the official gazette on 23rd May, 2000. Therefore, this amended provision was inserted and came into existence on 9th May, 2000 as per Section 3 of the M.P. General Clauses Act, 1957. Sub-section 2 of this inserted provision says that it shall come into force on the 26th day of January, 2001, whereas Section 2 (f) of the M.P. Reorganization Act, 2000, says, "law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Madhya Pradesh. Section 79 of the M.P. Reorganization Act, 2000, which provides for adaptation of the existing laws of the State of M.P. by the newly created State of Chhattisgarh, lays down that for the purpose of facilitating the application in relation to the State of Madhya Pradesh or Chhattisgarh *of any law made before the appointed day*, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law. Therefore, in view of this provision the law in question was already made and it became law on 9th May, 2000 when the Governor of Madhya Pradesh gave his assent. Therefore, by the adaptation order dated 28th October, 2002, all the existing laws were adapted and the Adhiniyam was also adapted in view of the provisions of Section 79 of the M.P. Reorganization Act, 2000. It is true that words "in force in the State" have been used in the adaptation order, but as per the enabling Section 79 under which this adaptation order was passed provides that all the law made before the appointed day (01.11.2000) i.e. on the day of the reorganization of the State of Chhattisgarh was within the competence to adapt all laws which were made by the State of M.P., in other words which were already in existence as on 01.11.2000 irrespective of the fact whether they were in force on that day or not.

Therefore, the State also adapted this newly inserted provision in the Adhiniyam along with the Adhiniyam. The newly inserted clause (m) of sub-Section 1 of Section 36 was already inserted in the Adhiniyam on 9th May, 2000 and by the adaptation order, the whole Adhiniyam was adapted. Therefore, from the date of adaptation i.e. 1st November, 2000, the newly inserted provision was also deemed to have been adapted.

10. In this connection, if we look at clauses (a) & (b) of sub-Article 3 of Article 13 of the Constitution of India, clause (a) provides that "law" includes any Ordinance, order, bye-law, rule, regulation, notification and clause (b) specifically lays down that *"laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution.* Clause (b) further clarifies that *notwithstanding that any such law or part thereof may not be then in operation either at all or in particular areas.* Similarly, Article 366 (10) defines *"existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature.* Article 372 (1) lays down that all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature. Explanation-I clarifies that the expression *"law in force" in this article shall include a law passed or made by a Legislature* or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, *notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.* Therefore, on the reading of the above provisions and with the help of the above Articles of the Constitution of India, there can be no two opinions that "law in force" means and includes all the existing laws or laws made whether in fact they were in operation or not as the intention behind the adaptation

order was to adapt all the existing law made. There is no difference between the expressions "existing law" and "law in force".

11. I am fortified in my opinion by the judgment in the case of **Fazru & another** ***(supra)***. The Punjab & Haryana High Court passed the order relying upon the decision of Hon'ble the Supreme Court passed in the case of **Sant Ram & others** ***(supra)*** in which the Supreme Court held that

> "the definition of the term "law" must be read with the first clause. If the definition of the phrase "laws in force" had not been given, it is quite clear that definition of the word "law" would have been read with the first clause. The question is whether by defining the composite phrase "laws in force" the intention is to exclude the first definition. The definition of the phrase "laws in force" is an inclusive definition and is intended to include laws passed or made by a Legislature or other competent authority before the commencement of the Constitution irrespective of the fact that the law or any part thereof was not in operation in particular areas or at all. In other words, laws, which were not in operation, though on the statue book, were included in the phrase "law in force". But the second definition does not in any way restrict the ambit of the word "law" in the first clause as extended by the definition of that word. It merely seeks to amplify it by including something which, but for the second definition, would not be included by the first definition. There are two compelling reasons why custom and usage having in the territory of India the force of the law must be held to be contemplated by the expression "all laws in force". Firstly, to hold otherwise, would restrict the operation of the first clause in such wise that none of the things mentioned

in the first definition would be affected by the fundamental rights. Secondly, it is to be seen that the second clause speaks of "laws" made by the State and custom or usage is not made by the State."

12. Apart from that if we go behind the objective of inserting the provision, clause (m) of sub-section (1) of Section 36 of the Adhiniyam, it was to encourage the movement of family planning and why sub-section (2) of Section 1 was inserted, the idea behind was that in order to defer and postpone the application of enforcement of this law with a view to take care of any conception on or around the commencement of the Act, the normal period of gestation being nine months. If a woman has conceived at the commencement of the Act then any one of such couples would not be disqualified. Though not disqualified on the date of election if any person holding any of the said offices incurs a disqualification by giving birth to a child one year after the commencement of the Act he becomes subject to disqualification and is disable from continuing to hold the office. The disability is incurred by the birth of a child which results in increasing the number of living children, including the additional child born one year after the commencement of the Act. Therefore, in fact, this inserted provisions came into force from the date of the provisions received the assent of the Governor i.e. 9th May, 2000, but this was deferred up to 26th January, 2001, to take care of those persons, if any conception on or around the commencement of the Act takes place. If a woman has conceived at the commencement of the Act then any one such couple would not be disqualified. In other words, this was deferred for a certain period, but in fact the inserted provision came into force on the date the Act received the assent of the Governor.

13. Therefore, in view of the above discussion, I do not find force in the arguments of Mr. Awadh Tripathi, Mr. Rajeev Shrivastava, Mr. Prashant Mishra, Mr. Yashwant Tiwari and Mr. H.B. Agarwal. As far as the

judgment cited by Mr. Rajeev Shrivastava, in the case of The **Chief Commissioner, Union Territory, Chandigarh** ***(supra)*** is concerned, it is of no help to the petitioner in the present case, because in that case, the Court held that before partition the State of Punjab issued a notification giving three months' notice under Section 6 of the Sales Tax Act with the intention to amend item 30 of Schedule-B to exclude pure silken fabrics from the list of tax free goods. Meanwhile, the Union Territory of Chhandigarh came into existence before the expiry of three months mentioned in the notification could not impose tax on pure silken fabrics by availing of the said notification under Section 88 of the Reorganization Act because the said notification was not considered to be a 'law in force' as contemplated by Section 88 until and unless on the expiry of the period of three months a second notification was issued amending the Schedule. The notification issued by the State of Punjab was only for three months and on the expiry of that period, the second notification was not issued. The Court held that the notification was not issued that is why it is not in force. Therefore, the phrase "in force" was used in different context.

14. As far as the decision in the case of **M/s. Punjab Tin Supply co., Chandigarh etc. etc.,** ***(supra)*** is concerned, while dealing with the power to exempt certain buildings or class of building from operation of the Act, the Supreme Court held that "All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended.

15. In the case of **The State of Orrisa** ***(supra),*** in para-6, while dealing with the amendment in the Ceiling Law the Supreme Court held that "Chapter IV of the principal Act was repealed by the Amending Act 15

of 1965. The Court further held that on the plain words of the proviso the law prescribing the ceiling limit must be in force at the date of acquisition. In the present case the law relating to the ceiling limit, viz., Chapter IV of the principal Act was never made operative by a notification, and was repealed by Act 15 of 1965. The ceiling limit under Section 47 of the principal Act was on that account inapplicable to the land-holders who challenged the validity of Section 45 of the amending Act." In that case, since Chapter IV of the principal Act was repealed which was not in force on the date of the acquisition, the Court held that, the provision cannot be made applicable which is not the situation in the present case.

16. As far as the case of **K. Manikchand & others vs. Elias Saleh Mohamed Sait and others** reported in **AIR 1969 SC 751** is concerned, applicability of Section 2(3) (b) and (c) of the Usurious Loans Act 1918 was considered in this case and the difference between the words 'coming into operation of the Act' and the words 'commencement of the Act' were to be interpreted. The Court reached to the conclusion that the above provisions of this Act were in commencement in the territory of British India and not in the city of Bangalore, because Bangalore city was not a part of the British India but was a part of the Mysore State. Therefore, the Court reached to the conclusion that when the mortgage deed was executed on that date the provisions of the above Act were not in commencement in Bangalore city as the same was not the part of the British India Territory. Therefore, these words were required to be interpreted in a different context. Whereas in the present case, as has been mentioned above, Section 79 of the Reorganization Act specifically lays down that the 'law made before the appointed day'. In view of Section 79 and also in view of Articles 13 & 372 of the Constitution of India, it makes no difference that whether on the date of adaptation i.e. 1st November, 2000 the provisions of clause (m) of sub-section (1) of Section 36 was

in force or not. But in view of Section 79 of the M. P. Reorganization Act and as per the adaptation order dated 22nd October, 2002 this law was already adapted w.e.f. 1st November, 2000. Therefore, the above authority is of no help.

17. In view of the above discussion, I am of the opinion that the newly inserted provision clause (m) of sub-Section (1) of Section 36 of the Adhiniyam which was inserted in the Adhiniyam on 09.05.2000 was adapted by the State of Chhattisgarh w.e.f. 1st of November, 2000 by the adaptation order dated 28th October, 2002. This provision has been validly adapted since this was the law made and the "law existing" on the date of the adaptation which includes the "law in force". As such, the Collector, Raigarh, has rightly pressed into service this provision against the petitioner and the petitioner has no case. Accordingly, the petition (W.P.No.2684/2003) stands dismissed.

18. As far as W.P.No.2685/2003 is concerned, this petition has been filed by Firanteen Bai, W/o Pukram, who was elected as Sarpanch of Gram Panchayat Paraskol, Tehsil: Sarangarh, Distt. Raigarh. The petitioner was already having one son and one daughter before the commencement of clause (m) of sub-Section 1 of Section 36 of the Adhiniyam. After this provision came into force on 26th January, 2001, a third child i.e. a daughter is born to the petitioner on 05.10.2001 which has not been disputed. Therefore, the petitioner incurred disqualification to hold the post of Sarpanch on account of the birth of third child on 05.10.2001. On the basis of the above order, Firanteen Bai, the petitioner has also no case and the petition (W.P.No.2685/2003) is liable to dismissed. Accordingly, it is dismissed.

19. As far as W.P.No.2686/2003 is concerned, this petition has been filed by Pukram who was elected as Panch of Ward No.9 of Gram Panchayat Paraskol, Tehsil: Sarangarh, Distt. Raigarh. The petitioner was already having one son and one daughter before the commencement of clause

(m) of sub-Section 1 of Section 36 of the Adhiniyam. After this provision came into force on 26th January, 2001, a third child i.e. a daughter is born to the wife of the petitioner on 05.10.2001 which has not been disputed. Therefore, the petitioner incurred disqualification to hold the post of Panch on account of the birth of third child on 05.10.2001. On the basis of the above order, Pukram, the petitioner has also no case and the petition (W.P.No.2686/2003) is liable to dismissed. Accordingly, it is also dismissed.

20. Before parting with this order, I deem it my duty to express my thanks and appreciate the contribution and assistance rendered by Mr. Rajeev Shrivastava, Mr. Prashant Mishra, Mr. Yashwant Tiwari, Mr. H.B. Agarwal and Mr. Manindra Shrivastava, Advocates. Without their assistance it would not have been possible for this Court to render this lucid order with promptness.

Sd/-
L.C.BHADOO
Judge

Soma